

**KENTUCKY PERSONNEL BOARD
MINUTES OF FEBRUARY 8, 2019**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Crall on February 8, 2019, at approximately 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky.

Board Personnel Present:

Brian J. Crall, Chair
Beverly H. Griffith, Member
Catherine J. Monteiro, Member
Richard M. Waite II, Member
Tanya Lawrence, Member
Mark A. Sipek, Executive Director and Secretary
Stafford Easterling, General Counsel
Cynthia Perkins, Administrative Section Supervisor
Gwen McDonald, Administrative Specialist

Board Personnel Absent:

Mark O. Haines, Vice Chair
William J. Byrley, Member

Swearing in of reappointed Board member, Beverly Griffith.

The first order of business was to swear in reappointed Board Member Beverly Griffith. General Counsel Stafford Easterling administered the oath of office just prior to the start of the Board meeting. [Ms. Griffith was appointed by Governor Matthew Bevin and will serve a four-year term, which expires on January 1, 2023.]

2. **READING OF THE MINUTES OF THE REGULAR MEETING HELD JANUARY 11, 2019.**

The minutes of the last Board meeting had been previously circulated among the members. Chair Crall asked for additions or corrections. Ms. Griffith moved to approve the minutes as submitted. Ms. Lawrence seconded and the motion carried 3-0. The Board members signed the minutes.

(Chair Crall does not vote, unless noted.)

3. EXECUTIVE DIRECTOR AND SECRETARY'S REPORT

Mr. Sipek congratulated Ms. Griffith on her reappointment to the Board.

Mr. Sipek briefly discussed the Annual Report for Fiscal Year 2018. This report was delayed due to the tardy submission of grievance numbers by certain state agencies. The number of merit employees at the beginning and end of the fiscal year will also be updated, with the Board's approval, as soon as possible.

Mr. Sipek reported that the number of evidentiary hearings conducted during the 2018 Fiscal Year are down, from an average of approximately 70 to 80 per year to only 40 hearings being held this past year. This may be due to a number of causes, including the settlements of cases. Going forward, the number of hearings conducted annually will be closely monitored to see if this is a trend or just an anomaly.

Mr. Sipek requested the Board approve the 2018 Annual Report, with the grievance numbers and numbers of merit employees to be updated in the near future. Chair Crall asked the Board's recommendation. Ms. Griffith moved to accept the 2018 Annual Report. Ms. Monteiro seconded and the motion carried 3-0. (A copy of the 2018 Annual Report is attached to the minutes.)

(Mr. Waite arrived at 9:40 a.m.)

4. REPORT OF THE PERSONNEL CABINET

LaDonna Koebel, Chief of Staff, and Larry Gillis, Executive Advisor, were present for the Personnel Cabinet. Ms. Koebel discussed the Personnel Cabinet's Annual Report, and reported that the Personnel Cabinet's Annual Reports, back to 1983, are now available on their website. She noted that the 2018 report is interesting because of the increased activity surrounding Personnel Cabinet services, including: the EEO conference achieving record-breaking attendance and an increase in mediations.

Larry Gillis, Executive Advisor, also discussed the Annual Report for 2018. He is a trained Mediator for the state, headed up Kentucky Employee Mediation Program (KEMP) in late 2017, and successfully mediated several Personnel Board cases during the first six months of 2018. Mr. Gillis stated that during calendar year 2018 (not fiscal year), he obtained 40 agreements to mediate, with 38 mediations held. Of those 38 mediations held, he stated that 25 were successful, which resulted in 17 Personnel Board settlements, none of which were rejected by the Board. He emphasized the importance of uniform, consistent language in the mediation agreements and the necessity of having appointing authorities present for the mediations. Mr. Gillis is enthusiastic about the progress the mediation program has made and expects the program to continue with good results into 2019 and beyond.

Ms. Koebel described the updated Treasury website, which has a new "Financial Empowerment" tab. This tab presents moneysaving tips and information in one place for citizens, with specific information for Aging Kentuckians, Emerging Adults, Kentuckians with Disabilities, Low-Income Families, Students, Veterans and Military Personnel, etc. In collaboration with the Personnel Cabinet, this tab also includes tips and links for state employees related to cost-saving benefits and investments.

Ms. Koebel pointed out that in the Governor's State of the Commonwealth address, he stated that over 10,000 children are in Kentucky's foster care program, many of which are awaiting adoption. The Personnel Cabinet wants employees to be aware of adoption assistance benefits available to state employees in the Executive Branch. Also, regarding state employment, she imparted that the Personnel Cabinet has contracted with "Linkedin" and representatives from that company are coming to Kentucky to train HR staff on how to promote vacancies in their agencies using this platform, as well as increasing our presence in social media to engage new applicants and current employees. The Personnel Cabinet's app users are increasing daily, and so is participation on the Cabinet's Twitter account.

Lastly, Ms. Koebel stated the Personnel Cabinet is supporting two pieces of legislation regarding the Kentucky Deferred Compensation Program (KDCP). The first bill, Senate Bill 107, would automatically enroll new state employees into KDCP at the lowest participation rate of \$30 per month. The employee can choose not to enroll, however, statistically, automatic enrollments increase participation. The second bill, House Bill 144, would track the money flow – a procedural issue that would get investment money to KDCP sooner, instead of the current, more time-consuming flow-through from Treasury to KDCP. This bill would also make the Kentucky State Treasurer a member of the KDCP Board.

Chair Crall stated that a good working relationship between the Personnel Board and the Cabinet is very important, and the progress made in mediations is very significant, as it helps the Board to better serve employees. He thanked the Cabinet for their work.

5. PETITIONED POSITIONS

Two unclassified Executive Advisor positions
Kentucky Horse Racing Commission
Public Protection Cabinet

Steve May, Director of the Division of Pari-mutuel Wagering and Compliance for the Kentucky Horse Racing Commission, and the Hon. Kate Bennet, from the Public Protection Cabinet's Office of Legal Services, were present. Mr. May advised that horse racing is a growth industry in Kentucky, with seven racetracks – soon to be eight, when the new track opens later this year in Christian County. They have also added account wagering options for patrons, with

nine licensed account wagering operators that are tasked with regulating, and historical racing at four race tracks, which will increase to five later this year. As such, the regulatory services need to be increased to keep up with the new growth. A lot more accounting needs to be done, in addition to more oversight. Currently they are working to increase staff, including adding a merit position to do some data management and auditing.

Mr. May re-emphasized points from the January 29, 2019 letter to Secretary Thomas Stephens, Personnel Cabinet, including the facts that: these positions would be non-merit, unclassified field investigator positions; the positions would allow investigators to be strategically placed throughout the Commonwealth to allow them to be closer to tracks and wagering facilities; and that these would be highly specialized positions, requiring wagering experience and investigation experience. The Commission did an exhaustive search of the merit system, but no classification seemed to fit their needs, so they are requesting these positions be non-merit.

Chair Crall questioned the rate of growth of pari-mutuel wagering claimed in the January 29, 2019 letter; from \$470 million to \$1.6 billion in a single year. Mr. May stated that was a mistake in the letter; that the growth was over the previous ten years, not a single year's growth. Chair Crall also questioned how much of the growth is live horse wagering as opposed to historical horse racing. Mr. May stated that the answer depends on how you look at it; the Commission is responsible for monitoring all wagering on Kentucky races, whether the wager is placed in-state or out-of-state. The numbers in the letter were actual wagers placed live on-track or by patrons in the Commonwealth through account wagering. A lot of the wagering has shifted from live on-track wagers to account wagering, but the Commission is responsible for investigating any type of irregularities in either forum. The amount of wagering on Kentucky races, whether in Kentucky or out of Kentucky is about \$1 billion per year, with strong growth. Live wagering is strong. Simulcasting dollars is part of the wagering the Commission wants to make certain is regulated accurately.

Chair Crall asked if approximately \$600 million was historical racing. Mr. May opined that the Commission expects \$1 billion to be wagered on historical horseracing. Chair Crall then asked how the Federal Wire Act would impact them going forward. Mr. May stated that the Commission does not feel it will impact the growth very much in the Commonwealth.

Ms. Griffith moved to approve the two unclassified Executive Advisor positions with the Kentucky Horse Racing Commission. Mr. Waite seconded and the motion carried 4-1, with Chair Crall opposing.

6. **ORAL ARGUMENTS**

- A. **John Shields v. Justice and Public Safety Cabinet/Corrections (2017-236)**
(Appellant's Request)
Moved from January

Present for oral arguments were counsel for the Appellant, the Hon. Samuel Hayward, and counsel for the Appellee, the Hon. Angela Cordery. Warden Janet Conover was in attendance.

- B. ~~**Ralph Crawford v. Energy and Environment Cabinet (2018-098)**~~
~~(Appellant's Request)~~
Moved to March

- C. **Rodney Milburn v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife Resources (2018-042 and 2018-130) (2 appeals)**
(Appellant's Request)

Present for oral argument was counsel for the Appellee, the Hon. Evan Jones. Since oral argument was requested by counsel for the Appellant, and neither counsel nor Appellant was present, this matter was deferred to the next meeting of the Board.

7. **CLOSED SESSION/RETURN TO OPEN SESSION**

Mr. Waite moved that the Board go into Executive Session for the purposes of discussing complaints and deliberations regarding individual adjudications. Ms. Lawrence seconded. Chair Crall stated that a motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. [Pursuant to KRS 61.810(1)(c), (j) and (k), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; specifically, *Finance and Administration Cabinet v. Kellie Lang and Personnel Board; Commonwealth of Kentucky, Office of the Secretary of State v. Jared Dearing and Jennifer Scutchfield*, 19-CI-00087; and deliberations regarding individual adjudications as listed on the Board's Agenda for today's meeting.]

This closed session will also consider matters mandated by KRS 11A.080 and KRS 11A.110(1) to be kept confidential, which comports with the exception found in KRS 61.810(1)(k). (10:30 a.m.)

Ms. Griffith moved to return to open session. Mr. Waite seconded and the motion passed by acclamation. (11:17 a.m.)

8. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments, where applicable.

A. **John Shields v. Justice and Public Safety Cabinet/Corrections (2017-236)**
Moved from January

Ms. Monteiro moved to defer this matter to the next Board meeting. Ms. Lawrence seconded and the motion carried 4-0.

B. **Rodney Milburn v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife Resources (2018-042 and 2018-130) (2 appeals)**

Ms. Griffith moved to defer this matter to the next Board meeting. Ms. Monteiro seconded and the motion carried 3-0, with Mr. Waite abstaining.

C. **Adam Aranda v. Justice and Public Safety Cabinet/Corrections (2018-067)**

Ms. Griffith, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Lawrence seconded and the motion carried 4-0.

D. **Laura Lynne Best v. Public Protection Cabinet (2017-074)**

Ms. Monteiro, having considered the record, moved to accept the recommended order dismissing the appeal. Mr. Waite seconded and the motion carried 3-0, with Ms. Griffith abstaining.

E. **Brianna Brown v. Cabinet for Health and Family Services (2018-059)**

Mr. Waite, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Griffith seconded and the motion carried 4-0.

F. **Jeffrey Duerson v. Justice and Public Safety Cabinet/Criminal Justice Training (2017-228)**

Ms. Monteiro, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Lawrence seconded and the motion carried 4-0.

G. **Donald Kroeger v. Tourism, Arts and Heritage Cabinet/Parks (2018-052 & 2018-108) (2 appeals)**

Ms. Griffith, having considered the record, moved to accept the recommended order dismissing the appeals. Ms. Lawrence seconded and the motion carried 4-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

Ms. Lawrence moved to accept the recommended orders *en bloc* and to dismiss the appeals for failure to timely prosecute the appeals. Ms. Griffith seconded and the motion carried 4-0.

H. Jasmine Pickett, v. Cabinet for Health and Family Services (2017-068)

I. James Ray v. Transportation Cabinet (2018-064)

9. **WITHDRAWALS**

Ms. Monteiro moved to accept the following withdrawals *en bloc* and to dismiss the appeals. Mr. Waite seconded and the motion carried 4-0.

A. Farhad Abad v. Transportation Cabinet (2018-127)

B. Mariah Adkins v. Education and Workforce Development Cabinet & Personnel Cabinet (2019-004)

C. Douglas Campoamor v. Transportation Cabinet (2018-121)

D. Elspeth B. Cobb v. Cabinet for Health and Family Services (2018-185)

E. Billy Henderson v. Justice and Public Safety Cabinet/Juvenile Justice (2018-101)

F. David Short v. Justice and Public Safety Cabinet/Corrections (2018-199)

G. Whitney Thrasher v. Justice and Public Safety Cabinet/Corrections (2018-201)

H. Andrea Collins v. Justice and Public Safety Cabinet/Corrections (2017-235)

I. Elizabeth Adams v. Justice and Public Safety Cabinet/Corrections and Personnel Cabinet (2018-198)

10. **SETTLEMENTS**

Ms. Griffith moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Ms. Lawrence seconded and the motion carried 4-0.

A. Alicia Bloyd v. Justice and Public Safety Cabinet/Corrections (2018-093)
(Mediation)

B. Christopher Weick v. Justice and Public Safety Cabinet/Corrections (2018-184)

C. Katrina Wilbanks v. Cabinet for Health and Family Services (2018-190)
(Mediation)

- D. Clara McDonald v. Cabinet for Health and Family Services (2018-155)
- E. Justin Nubby v. Cabinet for Health and Family Services (2018-192)


11. **OTHER**

Mr. Sipek advised there was one more significant interview and a couple of smaller interviews to be held in the Little Sandy Correctional Complex investigation. Writing the report is in process.

Mr. Sipek asked if there would be any known absences from the March Board meeting. He advised he would be scheduling the Board photograph for the March meeting.

Chair Crall mentioned that during the first oral argument, he allowed Mr. Hayward to argue past the seven-minute limit. He stated he was not uncomfortable with doing that, so long as the Board had no objections. If any Board members did object, they were welcome to discuss it further.

There being no further business, Mr. Waite moved to adjourn, Ms. Lawrence seconded, and the motion passed by acclamation. (11:25 a.m.)




Brian J. Crall, Chair



Beverly H. Griffith, Member



Catherine J. Monteiro, Member



Richard M. Waite II, Member



Tanya Lawrence, Member

KENTUCKY PERSONNEL BOARD

ANNUAL REPORT

FOR

FISCAL YEAR 2018

SUMMARY OF ACTIVITIES

This annual report is generated pursuant to KRS 18A.075(6).

The list below enumerates the major activities of the Personnel Board during Fiscal Year 2017.

1. Hearing appeals pursuant to the provisions of KRS Chapter 18A of Merit System (classified) employees and unclassified employees, who have been dismissed, demoted, suspended or otherwise penalized.
2. Revision of administrative regulations as needed.
3. Tracking grievances that are filed within the agencies.
4. Zealous protection of equitable treatment and due process of all state employees, including answering various questions from state employees, members of the press and the general public concerning the merit system and its procedures.
5. Participation by hearing officers, Executive Director and General Counsel in intensive hearing officer training conducted by the Office of the Attorney General and other professional organizations as mandated by KRS Chapter 13B, Administrative Hearing Procedures Act.
6. Conducting investigations of matters relating to KRS Chapter 18A as they are brought to us by various means.
7. Training state personnel on the activities of the Board and the provisions of KRS Chapter 18A.

**KENTUCKY PERSONNEL BOARD MEMBERSHIP
FISCAL YEAR 2018
JULY 1, 2017 – JUNE 30, 2018**

The Kentucky Personnel Board consists of five members who are appointed by the Governor for overlapping terms of four years, and two Merit System (classified) employees who are elected by their peers, also for four-year terms.

<u>ACTIVE MEMBERS</u>	<u>COUNTY OF RESIDENCE</u>	<u>APPOINTMENT, REAPPOINTMENT OR ELECTION</u>	<u>END OF TERM</u>
Brian J. Crall --Chair	Jessamine	Appointed March 4, 2016	January 1, 2020
Mark O. Haines --Vice Chair	Barren	Appointed April 28, 2016 Reappointed January 4, 2018	January 1, 2018 January 1, 2022
Beverly H. Griffith	Daviess	Appointed June 24, 2016	January 1, 2019
William J. Byrley	Jefferson	Appointed October 14, 2016	January 1, 2020
Heather C. Wagers (Sworn in February 10, 2017)	Franklin	November 16, 2016	June 30, 2018
Catherine J. Monteiro	Jefferson	Appointment March 23, 2017	January 1, 2021
Tanya Lawrence	Franklin	August 11, 2017	June 30, 2018

APPEALS

In Fiscal Year 2018, the Personnel Board received two hundred and thirty-nine (239) appeals alleging some violation of KRS Chapter 18A. These appeals came from classified employees who had been dismissed, suspended, demoted, laid off, or who alleged some other merit system violation. Also included in this number are appeals from unclassified employees who were dismissed, suspended, demoted, or otherwise penalized for cause or who made allegations of discrimination. Persons eligible on employment registers compiled by the Personnel Cabinet who allege some form of penalization are also allowed to make certain claims to the Board and those appeals are also included in this number. This number includes appeals filed by individuals over which the Personnel Board's legal jurisdiction is questionable. The appeals were reviewed to determine whether or not the Board actually had jurisdiction.

The Board held approximately three hundred ten (310) pre-hearing Conferences. Each appeal is scheduled for a pre-hearing to determine the issues and address any matters that need to be clarified before the evidentiary hearing. Some appeals may require more than one pre-hearing conference. The Board's Executive Director and General Counsel conduct almost all of the pre-hearings to conserve the hearing officers' funding.

The hearing officers (including the General Counsel and Executive Director) conducted forty (40) evidentiary hearings. Some of these were multiple-day hearings, while others lasted only part of a day. The Board reviews the hearing officers' Findings of Fact, Conclusions of Law and Recommended Order. The Board also reviews any Exceptions and Responses to Exceptions filed by the parties and considers oral arguments, if requested by the parties. In all cases, the Board takes the final action.

The Kentucky Employee Mediation Program, administered by the Personnel Cabinet, mediated nineteen (19) Personnel Board appeals, which resulted in thirteen (13) settlements.

APPEAL STATISTICS

Appeals Pending 7-1-17	342
Appeals Filed During Fiscal Year	239
Final Orders Sent Out for Fiscal Year	294
Total Pending Cases 6-30-18	287

FINAL ORDERS SENT

Agency Actions Upheld (Appeal dismissed)	156
Appeals Sustained to Extent (Agency's penalty lessened)	1
Appeals Sustained (Agency's action reversed)	0
Reinstatements (Employee returned to work after dismissal)	0
Agreed Orders (Settlements)	50
Withdrawals (Appellant decided not to proceed)	87

KENTUCKY ADMINISTRATIVE REGULATIONS

Amendments were submitted as of June 30, 2018, to 101 KAR 1:325, the regulation establishing the length of probationary periods.

INVESTIGATIONS

Pursuant to KRS 18A.075, the Board has the power to conduct investigations concerning abuses of the merit systems. There were no investigations carried forward from the prior fiscal year.

The Kentucky Personnel Cabinet requested an investigation of the Little Sandy Correctional Complex.

GRIEVANCES

KRS 18A.075(6) was amended by the General Assembly in 2010 and reads as follows:

(6) Make annual reports to the Governor, the Legislative Research Commission, the secretary of the Personnel Cabinet, and the co-chairs of the Interim Joint Committee on State Government prior to October 1. The board shall make biennial reports to the General Assembly, which reports shall be a public record freely available to those persons interested in obtaining a copy. The board may request state agencies to provide information to assist the board in compiling the reports, which shall include the following:

(a) The number of merit state employees at the beginning and the end of the reporting period;

(b) The total number of grievances filed and mediation requests made by merit employees during the reporting period;

(c) A tabulation of the stages in which employee complaints were resolved during the reporting period; and

(d) The average amount of time taken to resolve employee complaints during the reporting period, by stage.

The total number of Merit (classified) employees on July 1, 2017, was 24,894.

Total number of Merit (classified) employees on June 30, 2018, was 23,451.

Twenty-eight (28) mediation requests were made by merit (classified) employees FY 2018.

One hundred fourteen (114) grievances were filed by merit (classified) employees in FY 2018.

There can be several stages of a grievance, depending at what stage the grievance is resolved.

Number of grievances resolved at first level of review:	26
Average time to resolve for first level:	6 days
Number of grievances resolved at second level of review:	25
Average time to resolve at second level:	14 days
Number of grievances resolved at third level of review:	10
Average time to resolve at third level:	15 days
Number of grievances resolved at fourth level of review:	15
Average time to resolve at fourth level:	30 days
Number of grievances resolved at Appointing Authority level (final level):	38
Average time to resolve at Appointing Authority level (final level):	36 days

KENTUCKY PERSONNEL BOARD MEETINGS

In compliance with KRS 18A.070(2), the Personnel Board scheduled ~~at~~ least one regular meeting each month.

2017

July 14

August 11

September 8

October 16

November 6

December 11

2018

January 12

February 9

March 9

April 13

May 11

June 8

All meetings were conducted in accordance with the Kentucky Open Meetings Act (KRS 61.805, *et seq.*). Notices were sent to the press and posted in public places.